REMARKS

At the time the Examiner mailed the present Official Action, claims 1-37 were pending, and the Examiner rejected all pending claims. By this amendment and response, Applicant has amended claims 1, 6-8, and 10, and canceled claim 16. Applicant respectfully submits that the present application is in condition of allowance in view of the amendments set forth above and the remarks set forth below.

Rejections Under 35 U.S.C. § 112

The Examiner rejected claims 1and 6 under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner alleged that the terms "more permanently" and "semi permanently" are relative terms that render the claims indefinite. Although Applicant agrees that these terms are relative terms, Applicant believes that these terms have been used in a proper and definite fashion given the fact that they are juxtaposed in the claims relative to one another. Nevertheless, in the interest of moving the present application toward issuance, Applicant has amended claims 1 and 6-8 to remove these terms in order to further clarify the claimed subject matter. Applicant submits that these amendments address the Examiner's concerns and that these amendments do not narrow the scope of the original claims. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1 and 6.

Rejections Under 35 U.S.C. § 102

Rejections based on the Nevis reference

The Examiner rejected claims 1-16, 34, and 35 under 35 U.S.C. § 102(e) as being anticipated by the Nevis reference. As set forth in detail below, Applicant respectfully traverses this rejection.

Anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under Section 102, a single reference must teach each and every element or step of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Thus, if the claims contain even one recitation not found in the cited reference, the reference does not anticipate the claimed subject matter.

In regard to independent claim 1, the Examiner stated:

> Nevis teaches temporarily loading the boot block program into a first memory (Nevis, col. 5, lines 4-7, random access memory), verifying the boot block program in the first memory (Nevis, col. 5, lines 11-22, verifying hashes), and if verified, more permanently loading the boot block program into a second memory (Nevis, col. 5, lines 24-30, install update).

Applicant respectfully submits that the Examiner has misinterpreted the teachings of the Nevis reference. Specifically, the Nevis reference does not once mention a "boot block program," much less describe the manner in which such a program might be loaded and verified. Furthermore, to the extent that the "BIOS" or "firmware" disclosed in the Nevis

reference can be construed as including a boot block program, Applicant respectfully submits that the Nevis reference includes absolutely no disclosure of "temporarily loading only the boot block program portion of firmware into a first memory," as set forth in independent claim 1.

In view of the remarks set forth above, Applicant respectfully submits that the subject matter of independent claim 1, and thus the subject matter of dependent claims 2-9, distinguishes over the teachings of the Nevis reference. Accordingly, Applicant respectfully requests withdrawal of the Examiner's rejection of claims 1-9.

In regard to independent claim 10, the Examiner stated:

> Nevis teaches a host computer (Nevis, Figure 2 "Firmware"), an appliance server coupled to the host computer where the appliance server has a storage memory and an execution memory (Nevis, Figure 2 "User Mode"), a control operably coupled to the appliance server and to the storage memory to control storage of programs into the storage memory (Nevis, Figure 2, Item 260, Transfer control to firmware), the applicant server being adapted to signal the control to permit the appliance server to storage a program in the storage memory (Nevis, Figure 2 Item 260), and a security device operably coupled to the control, the security device being adapted to signal the control to permit the host computer to store a program in the storage memory (Nevis, Figure 2 Item 270).

Furthermore, with regard to dependent claim 16, the Examiner stated that "Nevis teaches the security device being a switch (Nevis, col. 5, lines 15-30, installs if hash values are correct)."

Applicant has amended claim 10 to include the subject matter originally set forth in dependent claim 16, so that independent claim 10 now recites that the "security device comprises a switch." The specification specifically defines that the security switch may be,

for example, a software switch or a hardware switch. Application, p. 9, lines 15-18. The "hash values" relied upon by the Examiner could not reasonably be considered to literally comprise the claimed "switch."

In view of the remarks set forth above, Applicant respectfully submits that the subject matter of claim 10, and thus the subject matter of dependent claims 11-15, is patentable over the teachings of the Nevis reference. Accordingly, Applicant respectfully requests withdrawal of the Examiner's rejection of claims 10-15.

In regard to independent claim 34, the Examiner stated that "Nevis teaches all that is described above and further teaches the loading of the program over a network connection (Nevis, col. 3, lines 51-58, Internet)." Although the Examiner is correct in noting that the Nevis reference teaches that a "package may be...downloaded from the Internet," this teaching is not sufficient to anticipate the subject matter set forth in claim 34. Specifically, claim 34 further recites the acts of: "if the network connection fails, re-establishing the network connections; and once the network connection is re-established, continuing to load the program into the memory over the re-established network connection." These acts are clearly not taught by the Nevis reference.

In view of the remarks set forth above, Applicant respectfully submits that the subject matter of claim 34, and thus the subject matter of dependent claim 35, is not disclosed by the Nevis reference. Accordingly, Applicant respectfully requests withdrawal of the Examiner's rejection of claims 34 and 35.

Rejections based on the Spiegel reference

The Examiner rejected claims 17-23 under 35 U.S.C. §102(e) as being anticipated by the Spiegel reference. With regard to independent claim 17, the Examiner stated that "Spiegel teaches verifying a program of an applicant server (Spiegel, col. 4, lines 38-39) and if not verified, signaling a host computer to load a replacement program into the appliance server (Spiegel, col. 4, lines 40-43)."

Applicant respectfully asserts that the Examiner has misinterpreted the teachings of the Spiegel reference as applied to the claimed subject matter. Specifically, the Spiegel reference does not disclose a "host computer" for performing any function, much less a host computer that may be signaled to load a replacement program into an appliance server. Indeed, the section of the Spiegel reference relied upon by the Examiner merely states that if the validation fails, a backup BIOS startup block may be located in the "reclaim block." The Spiegel reference describes that the reclaim block is also referred to as an "update recovery block" which appears to be merely another block of code that may be executed after the processor is reset. *See* Spiegel, col. 4, lines 17-29. Therefore, although the Spiegel reference may teach that a replacement program may be loaded if a program does not pass verification, it does not teach that a host processor may be signaled to load such a replacement program, as set forth in independent claim 17.

In view of the remarks set forth above, Applicant respectfully submits that the subject matter of independent claim 17, and thus the subject matter of dependent claims 18-23, is not disclosed by the Spiegel reference. Accordingly, Applicant respectfully requests withdrawal of the Examiner's rejection of claims 17-23.

Rejections Under 35 U.S.C. § 103

In the Official Action under the heading "Claim Rejections - 35 U.S.C. § 103," the Examiner has rejected claims 24-31 and 36-37 using combinations of references, yet indicating that these claims are rejected under 35 U.S.C. § 102(e). Because these rejections are set forth under the above-listed heading, and because the rejections are based on combinations of references, Applicant assumes that the Examiner is actually rejecting these claims under 35 U.S.C. § 103(a). Accordingly, the remarks set forth below are based upon this assumption.

The Examiner rejected claims 24-31 under 35 U.S.C. § 103 as being unpatentable over the Nevis reference in view of the Spiegel reference. In regard to independent claim 24, the Examiner stated:

> Nevis teaches everything described above, but fails to teach the reloading of the first program from the execution memory into the storage memory if the second program is not verified. Spiegel teaches the reloading of the first program from the execution memory into the storage memory if the second program is not verified (Spiegel, col. 4, lines 40-43, backup bios startup block). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize Spiegel's method of responding to failed authentication with Spiegel's method of updating a BIOS because it offers the advantage of allowing reprogramming if tampering is detected (Spiegel, col. 1, lines 34-55).

By the Examiner's own admission, the Nevis reference fails to teach reloading the first program from the execution memory into the storage memory if the second program is not verified. Applicant agrees that the Nevis reference fails to disclose the subject matter. However, Applicant disagrees that the Spiegel reference discloses this subject matter and, thus, cures the recognized deficiency of the Nevis reference. Indeed, the cited portion of the Spiegel reference merely discloses either (1) issuing a warning signal and halting the system

if the validation fails, or (2) locating a backup BIOS startup block if the validation fails. The Spiegel reference does not disclose reloading a program that has already been replaced by a program under verification, as set forth in the first paragraph of independent claim 24. Therefore, the hypothesized combination of the Nevis and Spiegel references fails to disclose all of the elements set forth in independent claim 24.

In view of the remarks set forth above, Applicant respectfully submits that the subject matter of independent claim 24, and thus the subject matter of dependent claims 25-31, patentably distinguishes over the teachings of the Nevis and Spiegel references. Accordingly, Applicant respectfully requests withdrawal of the Examiner's rejection of claims 24-31.

The Examiner rejected claims 36 and 37 under 35 U.S.C. § 103 as being unpatentable over the Nevis reference in view of the Holtey reference. Applicant respectfully submits that the subject matter of claims 36 and 37 distinguishes over the teachings of the Nevis and Holtey references for the reasons set forth above in regard to the application of the Nevis reference to independent claim 34. The Nevis reference does not disclose the subject matter set forth in independent claim 34, and the Holtey reference does not cure these deficiencies. Accordingly, the hypothesized combination of the Nevis reference and the Holtey reference cannot render the subject matter set forth in dependent claims 36 and 37 obvious.

In view of the remarks set forth below, Applicant respectfully submits that the subject matter of claims 36 and 37 is patentably distinguishable over the Nevis and Holtey references. Accordingly, Applicant respectfully requests withdrawal of the Examiner's rejection of claim 36 and 37

Request and Payment for Extension of Time

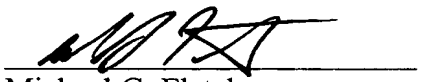
Applicant hereby requests a one month extension in the statutory period for response to the Official Action from May 8, 2005 to June 8, 2005, in accordance with 37 C.F.R. § 1.136. A transmittal letter authorizing you to charge the Extension of Time fee to Applicant's Deposit Account is enclosed herewith. The Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 08-2025, Order No. COMP:0222/FLE (200302048-1).

Conclusion

In view of the above remarks and amendments set forth above, the Applicant respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: June 8, 2005



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